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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 HERIBERTO PLAZA, JR.,

8 Plaintiff(s),

9 v.

10 GEICO DIRECT, et al.,

11 Defendant(s).

Case No. 2:19-CV-1954 JCM (NJK)

ORDER

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13 Presently before the court is defendant Geico General Insurance Company's
14 ("defendant") motion to dismiss or, in the alternative, sever/bifurcate and stay plaintiff's claims
15 for bad faith. (ECF Nos. 4; 5). Plaintiff Heriberto Plaza, Jr. ("plaintiff") filed a response and
16 countermotion for additional time pursuant to Federal Rule of Civil Procedure 56(d) (ECF Nos.
17 6; 8), to which defendant replied (ECF No. 9).

18 **I. Background**

19 The instant action arises from a dispute regarding plaintiff's claim for underinsured
20 motorists ("UIM") benefits. (ECF No. 1-1). Plaintiff alleges that he was a fault-free passenger
21 when he was rear-ended by Jeremy Maurello, an underinsured motorist. *Id.* Maurello "tendered
22 the global policy limits of \$10,000," and plaintiff filed a UIM claim with defendant. *Id.* at 4.
23 Plaintiff included "a comprehensive medical summary" of his injuries, which included roughly
24 \$38,822.40 in medical bills. *Id.* Defendant offered plaintiff \$8,400, which plaintiff believes was
25 unreasonable and "doesn't begin to compensate [p]laintiff for his medical specials." *Id.* at 4-5.

26 Plaintiff filed the instant action in state court, alleging breach of contract, violations of
27 Nevada's Unfair Claims Practices Act (Nev. Rev. Stat. 686A.310), and bad faith. (ECF No. 1-
28 1). Defendant timely removed the case. (ECF No. 1). Defendant now moves to dismiss

1 plaintiff's extra-contractual claims for failure to state a claim or, in the alternative, moves to stay
2 those claims. (ECF No. 4).

3 **II. Legal Standard¹**

4 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief
5 can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short
6 and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.
7 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not
8 require detailed factual allegations, it demands "more than labels and conclusions" or a
9 "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678
10 (2009) (citation omitted).

11 "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550
12 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual
13 matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (citation
14 omitted).

15 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply
16 when considering motions to dismiss. First, the court must accept as true all well-pled factual
17 allegations in the complaint; however, legal conclusions are not entitled to the assumption of
18 truth. *Id.* at 678-79. Mere recitals of the elements of a cause of action, supported only by
19 conclusory statements, do not suffice. *Id.*

20 Second, the court must consider whether the factual allegations in the complaint allege a
21 plausible claim for relief. *Id.* at 679. A claim is facially plausible when plaintiff's complaint
22 alleges facts that allow the court to draw a reasonable inference that defendant is liable for the
23 alleged misconduct. *Id.* at 678.

24 Where the complaint does not permit the court to infer more than the mere possibility of
25 misconduct, the complaint has "alleged—but it has not shown—that the pleader is entitled to
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28 ¹ Plaintiff repeatedly cites to the Nevada Rules of Civil Procedure. (ECF No. 6 at 2–3). Because this court has diversity jurisdiction over the instant action, the Federal Rules of Civil Procedure apply. *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).

1 relief.” *Id.* at 679. When the allegations in a complaint have not crossed the line from
2 conceivable to plausible, plaintiff’s claim must be dismissed. *Twombly*, 550 U.S. at 570.

3 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d
4 1202, 1216 (9th Cir. 2011). The *Starr* court held,

5 First, to be entitled to the presumption of truth, allegations in a
6 complaint or counterclaim may not simply recite the elements of a
7 cause of action, but must contain sufficient allegations of
8 underlying facts to give fair notice and to enable the opposing
9 party to defend itself effectively. Second, the factual allegations
that are taken as true must plausibly suggest an entitlement to
relief, such that it is not unfair to require the opposing party to be
subjected to the expense of discovery and continued litigation.

10 *Id.*

11 **III. Discussion**

12 *A. Bad faith claim*

13 In order to prevail on a bad-faith claim, plaintiffs must show “the absence of a reasonable
14 basis for denying benefits and the defendant’s knowledge or reckless disregard of the lack of a
15 reasonable basis for denying the claim.” *Falline v. GNLV Corp.*, 823 P.2d 888, 891 (Nev. 1991)
16 (quotation marks, ellipses, and citation omitted).

17 Because bad faith requires the defendant to be objectively and subjectively unreasonable,
18 the genuine dispute doctrine provides that “the insurer is not liable for bad faith for being
19 incorrect about policy coverage as long as the insurer had a reasonable basis to take the position
20 that it did.” *Pioneer Chlor Alkali Co. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pennsylvania*,
21 863 F. Supp. 1237, 1242 (D. Nev. 1994) (citing *Am. Excess Ins. Co. v. MGM Grand Hotels, Inc.*,
22 729 P.2d 1352, 1355 (Nev. 1986)). The Ninth Circuit has unambiguously held that, “because the
23 key to a bad faith claim is whether denial of a claim was reasonable, a bad faith claim should be
24 dismissed **on summary judgment** if the defendant demonstrates that there was ‘a genuine
25 dispute as to coverage.’” *Feldman v. Allstate Ins. Co.*, 322 F.3d 660, 669 (9th Cir. 2003)
26 (emphasis added). However, if a defendant’s valuation is unreasonable, the dispute as to value is
27 not “genuine,” and the genuine dispute doctrine does not apply. *Id.* (“Under *Guebara*, a genuine
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1 dispute does not exist where there is evidence that the insurer failed to conduct a thorough
2 investigation” (citing *Guebara v. Allstate Ins. Co.*, 237 F.3d 987, 994 (9th Cir. 2001)).

3 But this case does not come before the court on a motion for summary judgment.
4 Defendant moves to dismiss plaintiff’s bad faith claim at the onset of litigation. This court’s
5 holding in *Tracey v. Am. Family Mut. Ins. Co.* is instructive. No. 2:09-CV-01257-GMN, 2010
6 WL 3613875 (D. Nev. Sept. 8, 2010). In *Tracey*, plaintiff was involved in a vehicle collision,
7 but defendant disputed plaintiff’s valuation of the claim. *Id.* In particular, defendant argued that
8 injuries plaintiff complained about predated the accident. *Id.* This court explained as follows:

9 Although there may legitimately be a dispute over whether the
10 injury is unrelated to the loss or treatment was unreasonable, there
11 still exist material facts that may lead a jury to conclude that
12 [d]efendant’s assertions are unreasonable because it failed to
13 investigate the claim properly. The [d]efendant is making a factual
14 assertion that the injury was either unrelated to the loss or the
15 treatment was unreasonable. However, if the [d]efendant did not
reasonably investigate the claim before making this assertion, then
the genuine dispute is not in fact genuine. The genuine dispute
rule does not relieve an insurer from its obligation to thoroughly
and fairly investigate, process, and evaluate the insured’s claim.
A *genuine* dispute exists only where the insurer’s position is
maintained in good faith and on reasonable grounds.

16 *Id.* at *3 (internal citations and quotation marks omitted).

17 Plaintiff’s bad faith claim consists of rote recitations of the elements of a bad faith claim,
18 which are insufficient to survive a motion to dismiss. The plaintiff’s only factual allegations that
19 might support such a claim are that “[p]laintiff’s medical bills total approximately \$38,822.40”
20 and that “[d]efendant . . . failed to make a reasonable settlement offer and [d]efendant only
21 offered \$8,400.” (ECF No. 1-1 at 3). But plaintiff does not otherwise plead facts or
22 circumstances that would lead the court to conclude that this is anything but a genuine dispute as
23 to value.

24 Thus, the court grants defendant’s motion as to the bad faith claim. However, the court
25 finds that plaintiff may be able to cure the deficiency in its pleading. Accordingly, the court
26 dismisses plaintiff’s bad faith claim without prejudice.

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1 *B. Unfair Claims Practices Act*

2 Defendant argues that “[p]laintiff alleges that [defendant] has engaged in Unfair Claim
3 Practices without factual allegations supporting the rote litany of the alleged violations.” (ECF
4 No. 4 at 8).

5 The court finds that the allegations supporting this claim amount to a mere recital of the
6 statute, which is not enough to survive a motion to dismiss. *Iqbal*, 556 U.S. at 678–79. For
7 instance, plaintiff alleges that “[d]efendant . . . violated subsections b, c, d, e and n of N.R.S.
8 686A.310(1).” (ECF No. 1-1 at 4). But plaintiff does not otherwise plead facts that plausibly
9 suggest defendant commit any specific violations of those subsections. *See generally id.* In its
10 response to defendant’s motion, plaintiff does not specifically address the factual sufficiency of
11 its complaint as it pertains to this claim. (*See generally* ECF No. 6). Instead, plaintiff reiterates
12 the conclusory allegations in its complaint. *Id.* at 4.

13 Plaintiff then argues that he “believes and alleges that [d]efendant has failed to take
14 proper account of [p]laintiff’s damages, failed to make a proper investigation, and has failed to
15 make a proper offer.” *Id.* at 5. Other than the allegations that “[d]efendant . . . failed to make a
16 reasonable settlement offer and [d]efendant only offered \$8,400,” there are no factual allegations
17 in plaintiff’s complaint to support this argument. (*See* ECF No. 1-1 at 3).

18 Accordingly, the court grants defendant’s motion as to plaintiff’s Unfair Claims Practices
19 Act claim. However, the court finds that plaintiff may be able to plead facts to cure the
20 deficiency in this claim. Thus, the court dismisses plaintiff’s second cause of action without
21 prejudice.

22 **C. Conclusion**

23 Accordingly,


24 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant’s motion to
25 dismiss (ECF Nos. 4) be, and the same hereby is, GRANTED.

26 IT IS FURTHER ORDERED that plaintiff’s bad faith and Unfair Claims Practices Act
27 claims be, and the same hereby are, DISMISSED without prejudice.

1 IT IS FURTHER ORDERED that defendant's motion to stay (ECF No. 5) be, and the
2 same hereby is, DENIED as moot.

3 IT IS FURTHER ORDERED that plaintiff's counter motion for additional time (ECF No.
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5 DATED January 2, 2020.

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8 UNITED STATES DISTRICT JUDGE
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